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Federal Communications Commission

DA 99-1707

DISP

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.

(La Jara, Colorado)

MM Docket No. 99-106
RM-9509

(Westcliffe, Colorado)

MM Docket No. 99-110
RM-9513

(Carmel Valley, California)

MM Docket No. 99-171
RM-9574

(Nanakuli, Hawaii)

MM Docket No. 99-172
RM-9575

(Wahiawa, Hawaii)

MM Docket No. 99-173
RM-9576

(Hanapepe, Hawaii)

MM Docket No. 99-175
RM-9578

(Holualoa, Hawaii)

MM Docket No. 99-176
RM-9579

(Honokaa, Hawaii)

MM Docket No. 99-177 ✓
RM-9580

(Kihei, Hawaii)

MM Docket No. 99-178
RM-9581

(Kurtistown, Hawaii)

MM Docket No. 99-179
RM-9582

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: August 18, 1999

Released: August 27, 1999

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a multiple docket Notice of Proposed Rule Making ("NPRM"), as specified below, setting forth separate proposals to allot channels to specific communities. The proposals set forth in the above-captioned NPRM were not mutually exclusive with each other, and those that remain so are consolidated in this Report and Order as part of our effort to expedite and make more efficient the FM allotment rulemaking process because these proceedings are uncontested. While consolidated, these dockets are still separate for finality purposes. In the event a reconsideration petition is directed to an action in a particular docket, a separate Memorandum Opinion and Order will resolve that reconsideration petition.

2. Each petitioner filed comments in support of its proposal, reaffirming its intention to apply for the specified channel, if allotted. Each proposal complies with all Commission technical requirements, and we continue to believe that each proposal would serve the public interest. Accordingly, we adopt each proposal as follows:

(1) MM Docket No. 99-106; RM-9509; 14 FCC Rcd 4567 (1999)

Action: Mountain West Broadcasting requested the allotment of Channel 221A to La Jara, Colorado, as that community's first local aural transmission service. That request became mutually-exclusive with a proposal to allot Channel 221A to Chama, New Mexico, at coordinates 36-54-11 NL and 106-34-35 WL in the context of MM Docket No. 99-116 (RM-9536). As a means of resolving the conflict the Commission, on its own motion, allots Channel 246A to La Jara to accommodate Mountain West Broadcasting's expressed interest in providing a first local aural transmission service to that community.

Coordinates: 37-16-24 NL and 105-57-30 WL

Additional Information: Channel 246A can be allotted to La Jara without a site restriction.

FCC Contact: Nancy Joyner (202) 418-2180

(2) MM Docket No. 99-110; RM-9513; 14 FCC Rcd 4567 (1999)

Action: Mountain West Broadcasting requested the allotment of Channel 257A to Westcliffe, Colorado, as that community's first local commercial FM transmission service. That request became mutually-exclusive with a proposal to allot Channel 256C to Taos, New Mexico, at coordinates 36-47-33 NL and 106-02-49 WL in the context of MM Docket No. 99-116 (RM-9536). As a means of resolving the conflict the Commission, on its own motion, allots Channel 276A to Westcliffe to accommodate Mountain West Broadcasting's expressed interest in providing a first local commercial transmission service to that community.

Coordinates: 38-04-28 NL and 105-32-13 WL

Additional Information: Channel 276A can be allotted to Westcliffe with a site restriction 10.1 kilometers (6.2 miles) southwest of the community to avoid a short-spacing to Station KBIQ(FM), Channel 274C, Manitou Springs, Colorado, at coordinates 38-44-43 NL and 104-51-41 WL.

FCC Contact: Nancy Joyner (202) 418-2180.

(3) MM Docket No. 99-171; RM-9574; (DA 99-971) released May 21, 1999

Action: Mountain West Broadcasting requested the allotment of Channel 290A to Carmel Valley, California, a Census Designated Place ("CDP"), as the community's first local FM broadcast service. Supporting comments were filed individually by the petitioner, as well as SAE Broadcasting Company and Carmel Valley Broadcasting Company. Buckley Communications, Inc. and Buckley Broadcasting Corporation of Monterey, Inc. ("Buckley"), the respective licensees of Stations KIDD(AM) and KWAV(FM), Monterey, California, also filed comments asserting that the petition for rule making herein contained factual inaccuracies. Specifically, Buckley advises that the proposed allotment of Channel 290A to Carmel would result in a second local broadcast facility as Station KIEZ(AM) is licensed to that community. Additionally, Buckley notes that more than 26 full service radio stations, including its Monterey broadcast facilities, as well as several translators cover Carmel Valley, and therefore, the community is well served. Buckley concludes that Mountain West has not only mischaracterized the nature of broadcast service to the community but also has not shown that its proposal satisfies any of the Commission's FM allotment priorities, and requests that the record in this proceeding be corrected to reflect the aforementioned facts.

As to Buckley's concerns, the Notice stated that the requested allotment of Channel 290A to Carmel Valley would provide a first local FM transmission service to the community. Additionally, with respect to the coverage received in Carmel Valley from area facilities, the Commission has long held that reception service from nearby communities may be justification for denying a channel in comparative cases. However, this has not been applicable in noncomparative cases. In this instance the proposed allotment of Channel 290A will provide a second local aural transmission service to Carmel Valley, as well as a first local FM service, and therefore satisfies allotment priority four.¹

In view of the above, at the request of Mountain West Broadcasting, and as supported by SAE Broadcasting Company and Carmel Valley Broadcasting, we are allotting Channel 290A to Carmel Valley, California, as that community's first local FM transmission service.

Coordinates: 36-20-28 NL and 121-42-51 WL

¹The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

Additional Information: Channel 290A can be allotted to Carmel Valley with a site restriction 14.9 kilometers (9.2 miles) south of the community to avoid a short-spacing to Station KARA(FM), Channel 289B, Santa Clara, California, at coordinates 37-21-32 NL and 121-45-22 WL.

FCC Contact: Nancy Joyner (202) 418-2180.

(4) MM Docket No. 99-172; RM-9575; (DA 99-971) released May 21, 1999

Action: At the request of Mountain West Broadcasting, we are allotting Channel 295A to Nanakuli, Hawaii, as the community's first local aural transmission service.

Coordinates: 21-23-30 NL and 158-08-30 WL

Additional Information: Channel 295A can be allotted to Nanakuli without a site restriction.

FCC Contact: Nancy Joyner (202) 418-2180

(5) MM Docket No. 99-173; RM-9576; (DA 99-971) released May 21, 1999

Action: At the request of Mountain West Broadcasting, we are allotting Channel 278A to Wahiawa, Hawaii, as that community's first local aural transmission service.

Coordinates: 21-30-00 NL and 158-02-00 WL

Additional Information: Channel 278A can be allotted to Wahiawa without a site restriction.

FCC Contact: Nancy Joyner (202) 418-2180

(6) MM Docket No. 99-175; RM-9578; (DA 99-971) released May 21, 1999

Action: Mountain West Broadcasting requested the allotment of Channel 232C1 to Hanapepe, Hawaii, as that community's first local aural transmission service. Petitioner filed supporting comments. Aloha Mahalo Broadcasting Company ("Aloha") filed comments contending that Hanapepe is not a community but rather a neighborhood, citing Belview, Minnesota, 11 FCC Rcd 12793 (1996) and Lupton, Michigan, 11 FCC Rcd 14428 (1996). Moreover, Aloha states that Hanapepe is neither incorporated nor listed in the U.S. Census, and has no governing authority, nor police or fire departments, and no taxing authority. Aloha provided a Declaration by the former Commissioner of Police on the Island of Kauai, where Hanapepe is located, regarding the status of Hanapepe. Therein it is stated that the area, which is unincorporated, is best described as a neighborhood rather than a community. It is also stated therein that the population of Hanapepe is not separately indexed for census purposes. We disagree with Aloha's assertions. Neither of the cases cited by Aloha are applicable here. As to Belview, Minnesota, supra, that community, which is listed in the 1990 U.S. Census with

a population of 383 was found to qualify as a community for allotment purposes. See 12 FCC Rcd 1278 (1997). Although Lupton, Michigan, supra, was denied, it is not a CDP. In this instance, Hanapepe is listed in the U.S. Census Reports as a census designated place ("CDP") with a separate population of 1,395 persons. Moreover, it has come to our attention that Hanapepe is attributed with numerous community indicia including banks, religious and government organizations, health care providers, a fire station, public library, pharmacy, post office, and many retail establishments that identify themselves with Hanapepe. Therefore, we find that Hanapepe is a bona fide community for allotment purposes. As a result of our findings, we will allot Channel 232C1 to Hanapepe as requested.

Coordinates: 21-54-43 NL and 159-35-43 WL

Additional Information: Channel 232C1 can be allotted to Hanapepe without a site restriction.

FCC Contact: Nancy Joyner (202) 418-2180

(7) MM Docket No. 99-176; RM-9579; (DA 99-971) released May 21, 1999

Action: At the request of Mountain West Broadcasting, we are allotting Channel 221C2 to Holualoa, Hawaii, as that community's first local aural transmission service.

Coordinates: 19-37-06 NL and 155-57-00 WL

Additional Information: Channel 221C2 can be allotted to Holualoa without a site restriction.

FCC Contact: Nancy Joyner (202) 418-2180

(8) MM Docket No. 99-177; RM-9580; (DA 99-971) released May 21, 1999

Action: At the request of Mountain West Broadcasting, we are allotting Channel 275C2 to Honokaa, Hawaii, as that community's first local aural transmission service.

Coordinates: 20-04-54 NL and 155-28-00 WL

Additional Information: Channel 275C2 can be allotted to Honokaa without a site restriction.

FCC Contact: Nancy Joyner (202) 418-2180

(9) MM Docket No. 99-178; RM-9581; (DA 99-971) released May 21, 1999

Action: At the request of Mountain West Broadcasting, we are allotting Channel 298C2 to Kihei, Hawaii, as that community's first local aural transmission service.

Coordinates: 20-47-00 NL and 156-27-48 WL

Additional Information: Channel 298C2 can be allotted to Kihei without a site restriction.

FCC Contact: Nancy Joyner (202) 418-2180

(10) MM Docket No. 99-179; RM-9582; (DA 99-971) released May 21, 1999

Action: At the request of Mountain West Broadcasting, we are allotting Channel 271A to Kurtistown, Hawaii, as that community's first local aural transmission service.

Coordinates: 19-35-36 NL and 155-03-36 WL

Additional Information: Channel 271A can be allotted to Kurtistown without a site restriction.

FCC Contact: Nancy Joyner (202) 418-2180

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 12, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Carmel Valley, California	290A
La Jara, Colorado	246A
Westcliffe, Colorado	276A
Hanapepe, Hawaii	232C1
Holualoa, Hawaii	221C2
Honokaa, Hawaii	275C2
Kihei, Hawaii	298C2
Kurtistown, Hawaii	271A
Nanakuli, Hawaii	295A
Wahiawa, Hawaii	278A

4. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening a filing window for these allotments will be addressed by the Commission in a subsequent order.

5. IT IS FURTHER ORDERED, That the aforementioned proceedings ARE TERMINATED.

6. For further information concerning a specific docket, contact the FCC Contact person listed above for that docket. Questions related to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**